



## GENERAL COUNSEL CORNER

By Peter H. Gunst, Esquire

### *A Morality Tale*

Equilon Enterprises trading as Shell Oil Products (“Shell”) had a problem with a service station that it owned in Riverside California. The local watershed project authority informed it of a significant groundwater contamination problem at the station that could require extensive remediation, and threatened to cause a spill that would result in millions of dollars of liability to Shell.

When the authority demanded that it enter into an indemnification agreement, Shell concluded that it would cost it between \$300,000 and \$500,000 to install a containment system; that it would be required to spend \$40,000 a year to maintain the system; and that a spill could result in a liability to Shell of between twenty million and fifty million dollars.

What to do? Shell was already in negotiations to sell the station to its dealer, Elias Atallah, for a sum of \$759,575. So why not unload the environmental landmine on its unsuspecting dealer?

It is undisputed that Shell never told Mr. Atallah about the groundwater problem, the cost of remediation or the potential environmental liability. It also failed to advise Mr. Atallah that Shell had allowed the conditional use permit for the station to lapse.

After the sale to Mr. Atallah had closed, he learned that the permit had lapsed when he started to install new underground storage tanks. When he

sought to obtain a new permit, its issuance was opposed successfully by the watershed authority, which revealed the site’s significant environment problems. Mr. Atallah then learned that the station was inoperable.

Mr. Atallah sued for fraud in state court, and Shell adamantly resisted his right to obtain any remedy even though it conceded that it had concealed from him obviously significant information concerning the station’s environmental problems.

Ultimately a jury ruled in Mr. Atallah’s favor, awarding him \$1,700,000 in damages attributable to his inability to operate the station. Mr. Atallah’s claim for punitive damages, however, was dismissed by the court for technical reasons.

Rather than let things ride, Shell appealed citing technical arguments that only a lawyer could love. Mr. Atallah countered by appealing the trial court’s dismissal of his request for punitive damages.

In a non-published opinion released in late 2008, *Atallah v. Equilon Enterprises*, the California intermediate appellate court affirmed the jury’s finding of liability and remanded the case to permit Atallah to present his case for punitive damages.

Rejecting Shell’s contention that there was “no evidence of any intent to conceal” the station’s true condition, the

appeal courts found its argument to be “remarkable” given the “campaign of deception” that Shell had pursued against Mr. Atallah.

The appeals court concluded:

In many ways, this case is a paradigm fraudulent concealment case. There is no doubt about what was concealed, no doubt that what was concealed was not merely material but crucial – a literal deal-breaker – and no doubt that [Shell] intended to deceive Atallah. There simply was no other way of unloading the gas station *as a gas station*, especially for the sum of \$759,575.

The subsequent trial of Mr. Atallahs’ punitive damage claim in March, 2010 resulted in the award of an additional fifty million dollars in punitive damages.

In a statement released after the trial, Mr. Atallah’s attorney described his client as “the quintessential little guy fighting for his rights.” And indeed he is, having to pursue his claim through a legal battle that lasted many years.

But what of Shell? Why did it embark upon what the appeals court labeled a “campaign of deception” intended to exact \$759,575 from Mr. Atallah? That sum does not even amounting to a rounding error on Shell’s massive multi-billion dollar financial statement.

Is it surprising that Shell engaged in behavior more befitting a cheap con artist than a major corporation? Given what we have learned about corporate morality over the past year and a half, maybe it is not so surprising at all.

[pgunst@agtlawyers.com](mailto:pgunst@agtlawyers.com)

To access the latest articles by the Service Station Dealer’s legal counsel, please visit the “Service Station Dealers: Legal Issues” section of the Astrachan Gunst & Thomas P.C. website at:

<http://www.agtlawyers.com/resources/petroleum.html>.